

3. On May 4, 2009, Tyler filed its Response in Opposition to Plaintiff's Motion to Remand and For Award of Attorney Fees and Expenses.

4. On May 11, 2009, Plaintiff filed its Reply Memorandum in Support of Motion to Remand (the "Reply").

5. The parties have fully addressed the legal basis for their respective positions in the Motion to Remand and Response in Opposition. Tyler does not attempt to rehash those arguments, but rather, seeks to correct a misstatement of fact by Plaintiff included its Reply.

6. On page 3 of its Reply, Plaintiff, speaking of Article 13 (the forum selection clause at issue in this case) incorrectly and without evidentiary support states that "**The parties specifically negotiated this provision . . .**" (Pl.'s Reply p. 3) Pursuant to Local Rule 7—401.(a), "if [a] motion requires consideration of facts not appearing in the record, the party also shall file all documentary evidence relied upon." *Id.* Plaintiff has not provided any evidentiary support for this statement as required by Local Rule 7—401(a). More importantly, however, this statement is false and patently misleading. Article 13 was not specifically negotiated by the parties. Rather, Article 13 is a standard provision that was drafted by Tyler and has been included as a matter of course in its contracts since 2005. Tyler seeks leave from this Court to submit a Surreply and supporting affidavit of John R. Baker, who was directly involved in the negotiations, to correct the factual record before for the Court.

WHEREFORE, Tyler respectfully requests that this Court GRANT its Motion for Leave to File a Surreply to Plaintiff's Reply and such further relief to which it is justly entitled.

Respectfully Submitted,

/s/ Andrew B. Russell

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**ATTORNEYS FOR DEFENDANT TYLER
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CERTIFICATE OF SERVICE

I certify that the foregoing instrument was served upon all counsel of record by the Court's electronic filing system on May 12, 2009.

/s/ Andrew B. Russell